

California Regional Water Quality Control Board
Santa Ana Region

March 2, 2001

ITEM: 10

SUBJECT: Administrative Civil Liability Complaint No. 00-95, Buie Communities and Mountain Gate Development, Corona, Riverside County

BACKGROUND

On December 18, 2000, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. 00-95 (copy attached) to Buie Communities and Mountain Gate Development (Buie) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$24,200 for the alleged violations. This item was originally scheduled for consideration by the Regional Board at the January 19, 2001 Board Meeting and was postponed at Buie's request.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Buie.

ACL No. 00-95 was issued by the Executive Officer to Buie for failing to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Requirements, and for discharging unauthorized non-storm water to the storm drain system.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250), with the State Water Resources Control Board. Buie filed an NOI and obtained coverage under the General Permit, WDID No. 8 33S310012. Buie's 167.7 acre construction site, Tract 24601, is located in the City of Corona, between Main Street and Lester Avenue and South of Upper Drive.

On July 26, 2000, Board staff inspected the Buie construction site and observed no BMPs implemented, debris and dirt in the street, sediment covered storm drain inlets, and unauthorized non-storm water discharges. Board staff informed the site superintendents that BMPs needed to be implemented and that the non-storm water discharges must cease. Board staff also pointed out problems with sediment blocking the storm drain

inlets and the absence of BMPs for erosion and sediment control. A site specific SWPPP was not available for review. The generic SWPPP that was provided to staff did not have any site specific BMPs listed, only copies of material from the State's construction BMP guidance document.

On July 28, 2000, Board staff re-inspected the site and observed a large quantity of sediment-laden non-storm water being discharged from a water truck washing the streets and gutters in the area that had been graded at the time of the prior inspection. The non-storm water discharge entered two storm drain inlets. The site superintendents were contacted and notified of the unauthorized non-storm water discharges to the storm drain system and they were told to immediately cease this operation. Board staff was informed that approximately 4,000 gallons of water had been used to flush the streets that day. The sandbags placed at certain areas of the site were inadequate to prevent sediment in the discharge from entering the storm drain system. A sample of the discharge was obtained, analyzed, and found to contain 44,400 mg/l of total suspended solids.

On September 1, 2000, Board staff conducted a drive-through inspection of the site. Most storm drain inlets were protected by BMPs. One storm drain located on the west side of Fullerton Street at Upper Drive was found to be unprotected. There was also tracking and sediment on Wasatch Street, which potentially is tributary to an unprotected storm drain inlet further down the street in the residential area. No non-storm water discharges were observed.

Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

Buie violated Provisions A.2 and C.2 of the General Permit. Buie violated Provision C.2 by failing to properly implement an effective SWPPP and violated Provision A.2 by discharging non-storm water, containing pollutants, to the waters of the United States from the construction site. Pursuant to Water Code Section 13385 (a) (2), civil liability may be imposed for the preceding violations. The maximum potential liability for these violations is \$50,000.

The Executive Officer issued ACL No. 00-95 because of these violations of the General Permit. The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement a SWPPP to control the discharge of pollutants in storm water runoff. They were also aware of the prohibition on discharge of unauthorized non-storm and storm water containing pollutants from the subject site.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Buie had been informed by Board staff during the initial inspection that non-storm water discharges must cease and appropriate BMPs needed to be implemented. Buie failed to correct the violations which resulted in a large quantity of non-storm water containing pollutants entering the storm drain system two days after the initial inspection.

4. Degree of Culpability

The storm water regulations are applicable to all construction activities. All dischargers, including Buie, are responsible for compliance with the Clean Water Act. Buie is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively develop and implement BMPs, Buie gained an economic advantage over their competitors. Economic savings from these violations are estimated as follows:

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| Cost to develop and implement proper SWPPP on a year- round basis | = | \$4,500 |
| Cost to train employees | = | \$1,000 |
| Cost to eliminate pollutants in non-storm water runoff , by using appropriate BMPs | = | \$3,500 |
| Total cost savings | = | <hr/> \$9,000 |

In addition, Regional Board staff costs to investigate this incident were \$700.

STATEWIDE ENFORCEMENT POLICY

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$24,200 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on December 18, 2000.

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opment
Parkway, Suite 200
77

Administrative

Tentative

Complaint No. 00-95

for Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

- Page 1 of 3

6. This complaint is based on the following facts:

- a) On July 26, 2000, Board staff inspected the Buie construction site and observed no best management practices (BMPs) implemented, debris and dirt in the street, dirt covered storm drain inlets, and unauthorized non-storm water discharges. Board staff informed the site superintendents that BMPs needed to be implemented and that the non-storm water discharges must cease. Board staff also pointed out problems with sediment blocking the storm drain inlets and the absence of any BMPs. A site specific SWPPP was not available for review. The generic SWPPP that was provided to staff did not have any site-specific BMPs listed and only contained copies of material from the State's construction BMP guidance document.
 - b) On July 28, 2000, Board staff re-inspected the site and observed a large quantity of non-storm water being discharged from a water truck washing the streets and gutters. The non-storm water discharge entered two storm drain inlets. The site superintendents were contacted and informed of the unauthorized non-storm water discharges to the storm drain system and were told to immediately cease this operation. Board staff was informed that approximately 4,000 gallons of water had been used to flush the streets that day. The sandbags placed at certain areas of the site were inadequate to prevent sediment from being discharged to the storm drain system. A sample of the discharge was collected and analyzed. A level of 44,400 mg/l total suspended solids was found.
 - c) On September 1, 2000, Board staff conducted a drive-through inspection of the site. Most storm drain inlets were protected by BMPs. One storm drain located on the west side of Fullerton Street at Upper Drive was found to be unprotected. There was also tracking and sediment on Wasatch Street, which could potentially enter another unprotected storm drain inlet further down the street in the residential area. No non-storm water discharges were observed.
7. Buie is alleged to have violated Provisions A.2 and C.2. of the General Permit. Buie violated Provision C.2 by failing to properly implement an effective SWPPP and violated Provision A.2 by discharging non-storm water, containing pollutants, to waters of the United States from the construction site.
8. Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
9. Pursuant to Section 13385(c), Buie is civilly liable in the amount of \$20,000 (\$10,000 per day for two days of violation) and an additional \$30,000 based on flow (4,000-

1,000=3,000 gallons @ \$10 per gallon) for the violations cited in Paragraph 7, above. The total maximum assessment is \$50,000.

10. Regional Board staff spent a total of 10 hours investigating this incident (@\$70.00 per hour), for a total staff time cost of \$700. Buie saved approximately \$3,500 by not implementing appropriate BMPs, including not sweeping the streets prior to washing them. These factors were considered in assessing the penalty indicated in Paragraph 11, below.
11. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes civil liability be imposed on Buie by the Board in the amount of \$24,200 for the violations cited above.

WAIVER OF HEARING

Buie may waive its right to a hearing. If Buie chooses to do so, please sign the attached waiver and return it, together with a check or money order, payable to the State Water Resources Control Board, for the amount of civil liability proposed in Paragraph 11, above, to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

If you have any questions, please contact Ms. Milasol Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238. All legal questions should be referred to the Regional Board's staff counsel, Mr. Ted Cobb, at (916) 341-5171.

Date

Gerard J. Thibeault
Executive Officer

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| In the matter of: |) | Complaint No. 00-95 |
| |) | for |
| Buie Communities and |) | Administrative Civil Liability |
| Mountain Gate Development |) | |
| 28281 Crown Valley Parkway, Suite 200 |) | |
| <u>Laguna Nigel, CA 92677</u> |) | |

WAIVER OF HEARING

I agree to waive Buie Communities and Mountain Gate Development's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 00-95. Enclosed is a check, made payable to the State Water Resources Control Board, in the amount of \$24,200. I understand that I am giving up Buie Communities and Mountain Gate Development's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Buie Communities and
Mountain Gate Development